

Title 1 - GENERAL PROVISIONS

Chapter 1.28 - PUBLIC HEARING PROCEDURES

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1.28.010 - Definitions.

[The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

"Comment" means any oral or written statement made by any person, not under oath, in any formal or informal proceedings before any hearing body.

"Complainant" means any person who files a complaint, or the city, alleging the violation of any ordinance, rule, regulation, order, decision, or statute adopted, administered, or enforced by the city, any subordinate body of the city, any entity acting with delegated authority of the city or any city agency or commission.

"Executive" means the city manager, the planning director, or the director of the relevant city department, with the most direct supervision of the issues affected in the formal or informal proceeding.

"Formal proceeding" includes adjudicatory hearings where sworn testimony may be taken. All formal proceedings will be recorded by audio tape, and may be recorded by video tape or by stenographer upon the written request of any person, provided that the requesting person absorbs the costs thereof and offers to allow any other person to obtain a copy of the video tape or written transcript at the requesting person's cost. All formal proceedings shall be public hearings unless otherwise permitted by law.

"Hearing body" shall include any of the following assigned by or pursuant to the authority of the city council to hear any matter: (i) the city council; (ii) the planning commission; (iii) any other commission, committee, or subcommittee assigned to preside over the formal or informal proceeding; and (iv) any hearing officer or panel of hearing officers assigned to preside over the hearing of a matter.

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"Informal proceeding" means public informational meetings where public proposals or plans are reviewed and where individuals, businesses, associations and other entities may attend, observe displays, watch presentations by staff and interested persons, ask questions of technical and other city staff or representatives, discuss proposals, and make comments and representations in support or opposition to the proposal.

"Party" means any applicant, appellant, respondent, complainant, the applicable commission, committee or subcommittee, the city or the city council.

"Person" includes a natural person, firm, association, organization, partnership, business trust, corporation, limited liability company, or any other public or private entity. This definition replaces person as currently defined in the Code.

"Presiding member" means the mayor or acting mayor, or the chairman of the commission hearing a matter or any member of the commission or other person designated to preside over a formal or informal proceeding.

"Respondent" means any person named in a complaint and alleged to be in violation of any ordinance, rule, regulation, order, decision, or statute adopted, administered, or enforced by the city.

"Staff" means the staff of the City of Colfax, including city employees and individuals serving the city pursuant to contract.

"Testimony" means any oral or written statement made under oath, including affirmation or declaration under penalty of perjury, in any formal proceeding before any city hearing body.

"Witness" means any person who offers testimony in any formal proceeding before any city hearing body.

(Ord. No. 515, Exh. A, 2-23-2011)

1.28.020 - Time limits for filing.

Any person aggrieved by an interpretation or action of the design review committee, planning commission, or any other legally constituted commission, may appeal such action to the appropriate appeal authority, by filing a written appeal with the appropriate fee within ten (10) days from the date of the committee's/commission's action. If the tenth day falls upon a weekend or holiday the appeal period shall be extended to the end of the next available business day.

(Ord. No. 515, Exh. A, 2-23-2011)

1.28.030 - Purpose of formal proceedings.

Formal proceedings will be used:

- A. At the request of any party before any city hearing body requested pursuant to [section 1.20.040](#); or
- B. Whenever a city hearing body is hearing:
 - 1. An appeal of an adverse decision by an affected applicant or citizen; or
 - 2. An enforcement proceeding against any person or entity located or doing business within the city.

(Ord. No. 515, Exh. A, 2-23-2011)

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1.28.040 - Order of presentations at formal proceedings.

The city's formal proceedings shall, unless the presiding member directs otherwise, proceed in the following order:

- A. The executive shall make a presentation to the hearing body identifying the application, appeal, enforcement proceeding or other matter pending before the hearing body, describing the project or issue at hand, and summarizing the staff recommendations, including the proposed findings, proposed conditions, and comments or testimony received prior to the formal proceeding.
- B. The public testimony portion of the formal proceeding shall follow the presentation by the executive and shall proceed in the following order:
 1. Any person desiring to provide testimony or provide comments on the matter being heard shall have the opportunity to do so as follows:
 - a. The party may make an oral presentation of not more than ten (10) minutes, in addition to any written comments or testimony submitted by the party prior to or at the formal proceeding. In the event the party has retained experts, each retained expert will be permitted an additional ten (10) minutes of oral public testimony or comment, in addition to any written comment or testimony submitted by them prior to or at the formal proceeding.
 - b. Other persons shall be allowed not more than three minutes of oral testimony or comment each, in addition to any written comment or testimony submitted by them prior to or at the formal proceeding. However, in the event the person has retained experts, these experts will be permitted a maximum of five minutes of oral comment or testimony each, in addition to any written comment or testimony submitted by such expert(s) prior to or at the formal proceeding.
 2. The party will be permitted to make an oral rebuttal, not exceeding five minutes. The presiding member may allow the party to submit written testimony, comments or evidence in addition to the oral rebuttal. However if the presiding member accords this privilege, the formal decision will be postponed until the written rebuttal information is received and posted for review and comment by the public.
 3. The executive may respond to and comment, as appropriate, on the testimony or comment presented by any person.
 4. The presiding member may close the public testimony portion of the formal proceeding once a reasonable opportunity to present all evidence, testimony, comments, questions, points of view and rebuttal testimony, has been allowed by the city.
- C. Questions by the hearing body will be allowed at any time following any person's presentation, testimony or comments.
- D. At the conclusion of the public testimony portion of the formal proceeding, the executive may propose to change the staff recommendation or the commission or council may propose to add, delete, or modify the conditions contained in the staff recommendation. The party and the executive shall have an opportunity to comment briefly and specifically on any proposed change.

(Ord. No. 515, Exh. A, 2-23-2011)

1.28.050 - Use of testimony in formal proceeding.

In the appropriate case, the hearing body may require by order instituting hearings, or by providing at least ten (10) days notice by mail or facsimile machine to the party or interested persons, that evidence

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on specified issues of fact or matters of technical expertise be presented as sworn testimony. Such requirements shall not preclude unsworn oral or written comments from being offered in the proceeding.

(Ord. No. 515, Exh. A, 2-23-2011)

1.28.060 - Presentation of public testimony in formal proceeding.

In addition to the time limits set forth above, at or before the formal proceeding, the presiding member of a hearing body may determine that the total amount of time that will be devoted to hearing testimony or comments may be increased or decreased, and may determine the time to be allotted to each person or to each side of an issue.

- A. The hearings will not be conducted according to technical rules relating to evidence and witnesses. Any relevant nonrepetitive evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.
- B. Irrelevant and unduly repetitious evidence shall be excluded. The presiding member may, when an issue before the hearing body has brought many members of the same organization to the hearing, direct that the organization designate one spokesperson who will be accorded ten (10) minutes to make his/her presentation for the organization, and state the number of members of the organization, in addition to any written statements which are submitted before or during the hearing. Where the presiding member uses this methodology, separate oral statements by each member of the organization will not be permitted.
- C. Hearsay or unsupported statements may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.
- D. Oral or written testimony offered by any person shall be under oath, affirmation or declaration under penalty of perjury.

(Ord. No. 515, Exh. A, 2-23-2011)

1.28.070 - Voting after recommendation—Formal proceeding.

- A. A vote on any matter subject to a formal proceeding may be taken at the conclusion of the formal proceeding or thereafter at a properly noticed public meeting after the hearing body has received a final staff recommendation and obtained all relevant testimony and comments it deems necessary to make an informed decision.
- B. If the hearing body determines that it needs additional testimony, comments, evidence or staff analysis and recommendations, it may postpone the vote on the matter pending before it to a subsequent meeting. Prior to the subsequent meeting the executive shall prepare a staff report that shall:
 - 1. Contain a staff recommendation; and
 - 2. Respond to:
 - a. Testimony, comments and other evidence presented at the formal proceeding; and
 - b. Comments on the pending matter by members of the hearing body, and supplementary testimony, comments or other evidence received. The executive may also supplement the analysis contained in any prior staff report.
- C. At the subsequent meeting, the executive shall summarize orally the staff recommendation, including the proposed findings and any proposed conditions. Immediately following the presentation of the

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staff recommendation, the hearing body may in its discretion obtain additional testimony, comments or evidence before deciding the matter before it.

- D. Where the hearing body moves to vote on a matter before it and impose terms or conditions different from those proposed by any party or terms or conditions different than those proposed by the staff in the staff recommendation, the party and the executive shall have an opportunity to state briefly and specifically their views on the conditions.

(Ord. No. 515, Exh. A, 2-23-2011)

1.28.080 - Informal proceedings.

Informal proceedings shall be used whenever the city makes proposed changes to local plans, considers amendments to the general plan or new community plans, revisions to the zoning code, or other proposals of general concern and interest within the City. The purpose of the informal proceeding is to establish two-way communications, directly respond to needs and comments as expressed by citizens of Colfax, or its businesses or associations or any other person, to understand the affected city interests, identify potential problems, and generate solutions.

(Ord. No. 515, Exh. A, 2-23-2011)

1.28.090 - Format for informal proceedings.

Informal proceedings will be held for a maximum of three hours on any one day, and will be set as successive meetings to allow for public review and comment, depending on the nature of the proposal under consideration. Members of the city council, planning commission or any other city agency, commission or committee may be present. City staff and consultants will be available for discussion of the proposal. Information stations may be organized by subject matter related to the proposal, including the disciplines necessary to discuss each subject in a format established by the executive to suit the specific circumstances.

(Ord. No. 515, Exh. A, 2-23-2011)

1.28.100 - Presentations.

All presentations by city staff or their consultants will be recorded by open captioned videotape, running continuously, and will be available for replay by any person within seven business days after the informal proceeding. All presentations may use exhibits or slides and refer to handouts, provided copies of such exhibits and handouts are available to any person.

(Ord. No. 515, Exh. A, 2-23-2011)

1.28.110 - Public comment or testimony.

All written comments related to the proposal that is the subject of the informal proceeding may be delivered to the city either at the informal proceeding or within ten (10) days after the conclusion of the informal proceeding. Alternatively, any person who wishes to make oral comments may do so to the city clerk, or the clerk's authorized agent, who will record such comments to enable their review and consideration. If the matter under consideration requires preparation of any type of environmental document, the city will respond to written comments about the environmental document in writing within the time required by law. Nothing in this section precludes any person from directly addressing members of the city council, planning commission or any other city agency, commission or committee present at the

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informal proceeding. The purpose of an informal proceeding is intended to ensure that information is disseminated to the public and comments are carefully considered prior to a final decision being made.

(Ord. No. 515, Exh. A, 2-23-2011)

1.28.120 - Voting—After recommendation "informal" proceeding.

The city council, planning commission or other city agency, commission or committee shall vote on proposed action after all informal proceedings on the proposed action are concluded, all written or oral public comments have been received, and where required have been responded to. In accordance with Government Code § 54954.3, the agenda for the meeting at which the vote is taken need not provide an opportunity for members of the public to address the city council, planning commission or other city agency, commission or committee on the matter upon which the vote is to be taken. At such meeting, the city council, planning commission or any other city agency, commission or committee may postpone final action pending receipt of such additional comments, testimony, evidence and other information it deems necessary in order to make an informed decision.

(Ord. No. 515, Exh. A, 2-23-2011)

1.28.130 - Applicability.

This chapter shall apply to all hearings, formal proceedings and informal proceedings before any hearing body of the city and supersedes any inconsistent provision of this Code that pertains to the conduct of hearings.

(Ord. No. 515, Exh. A, 2-23-2011)